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During the year that has just come to a close a number of decisions have been rendered illumining many dark corners of the different branches of law. The mills of the judiciary may grind slowly but they do it none the less steadily. An attempt is made here to review the more important of the decisions given during 1952 and reported in the columns of this Journal.

HIGH COURT : POWERS AND JURISDICTION.—In its decision in *Ponnuswami* v. *Returning Officer, Namakkal*[1], the Supreme Court makes it clear that the High Court has no jurisdiction under Article 226 of the Constitution in respect of matters provided for in Article 329 which covers all " electoral matters." In *Veerappa Pillai* v. *Raman and Raman*[2], the Supreme Court points out that however extensive may be the High Court's jurisdiction under Article 226, it is not extensive enough to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken. *Cosmopolitan Club* v. *Deputy Commercial Tax Officer*[3], recognises that the High Court's power to issue directions or writs under Article 226 does not require that the petitioner should be confined or restricted to a particular writ on English precedents and a petition for *certiorari* cannot be dismissed on the ground that the correct remedy would be by way of *mandamus* or prohibition. *Chandra* v. *Madras State*[4] holds that where a suit is the proper remedy the High Court will not ordinarily grant an order under Article 226. *Chenchanna Naidu* v. *Praja Seva Transports, Ltd.*,[5] lays down that where the High Court's civil jurisdiction is invoked under Article 226, the Civil Procedure Code becomes applicable to the proceedings. In *Subbiah* v. *Raghavalu*[6], it is decided that the High Court cannot interfere under Article 226 with executive direction by a magistrate to the police to take a particular action under section 107, Criminal Procedure Code. In *Ramakrishna Reddy* v. *State of Madras*[7], the Supreme Court takes the view that section 2 (3) of the Contempt of Courts Act excludes the High Court's jurisdiction only in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Penal Code, but not where the acts merely amount to offences of other descriptions for which punishment has been provided for in the Penal Code.

CONSTITUTIONAL LAW : In *Lotus Industrials* v. *State of Madras*[8], it is held that the Constitution does not preclude classification even by bodies other than the Legislature and that the division of consumers of yarn into " consumer quota holders " and others and the preferential treatment accorded to them by clause 30 of the Cotton Textiles Control Order cannot be held to be discriminatory and in contra-

1. (1952) 1 M.L.J. 775 (S.C.).
2. (1952) 1 M.L.J. 806 (S.C.).
3. (1952) 1 M.L.J. 401.
4. (1952) 1 M.L.J. 206.
5. (1952) 1 M.L.J. 448.
6. (1952) 1 M.L.J. 471.
7. (1952) 1 M.L.J. 736 (S.C.).
8. (1952) 1 M.L.J. 532.

vention of Article 14 of the Constitution. *Thamsi Goundan* v. *Kanni Ammal*[1], takes the view that there is no infringement of Article 14 by reason of the classification in section 488, Criminal Procedure Code, in favour of women more particularly wives and that too deserted by their husbands, without a similar provision in favour of men. An interesting decision on Article 14 is that in *Rajah of Bobbili* v. *State of Madras*[2], which holds that the Madras Estates Land (Reduction of Rent) Act, 1947, does not make any distinction between one landholder and another or one tenant and another and is only an illustration of the constitutional practice of classification which is reasonable and permissible. *Ramakrishniah* v. *President, District Board, Nellore*[3], decides that the exercise of any of the fundamental rights like the right of free speech or freedom of association cannot be made subject to the discretionary control of administrative or executive authority and Madras G.O. No. 416, Education, dated 24th February, 1939, empowering the Director of Public Instruction to forbid the existence of and dissolve any Teachers' Union not conforming to the rules and comeplling teachers in Local Board or Municipal service to obtain permission of the Board or Council concerned before forming unions, etc., is void as opposed to Article 19 (1) of the Constitution. In *Shamdasani* v. *The Central Bank of India*[4], the Supreme Court points out that Article 19 is intended to protect the fundamental freedoms assured to the citizen by clause 1 against State action other than the legitimate exercise of its powers to regulate private rights in the public interest and is not intended to prevent wrongful individual acts or to provide protection against merely private conduct. The decision in *Rajah of Bobbili* v. *State of Madras*[2], holds that there is no inviolable and absolute right in the landholder to collect any particular rent, that the Legislature could always provide for the ascertainment of a fair and proper rent notwithstanding any contract or usage and there is nothing in the Madras Estates Land (Reduction of Rent) Act, 1947, inconsistent with the provisions of Article 19(1) (*f*) read with Article 19 (5). *Vallinayagam Pillai* v. *State of Madras*[5], takes the view that the right of a citizen under Article 19 (1) (*g*) to carry on any business should be read with Article 19 (6) which contemplates that the State may impose reasonable restrictions in the interests of the general public, and the refusal of license to a touring cinema on ground of instructions from local government is no violation of fundamental rights. The same view is taken in *Sheik Abdul Khadir & Co.* v. *Subramania Pillai*[6]. The decision in *Indian Metal & Metallurgical Corporation* v. *Industrial Tribunal, Madras*[7], makes it clear that the right conferred by Article 19 (1) (g) to carry on any business is not absolute, that the State has the right to regulate any business and it is not confined to public utility business only: but, if a citizen has a right to carry on a business it must follow he must have the liberty not to carry it on if he so chooses and hence an award of an Industrial Tribunal directing a person to continue to carry on a business is void as inconsistent with the Constitution. *Anantakrishnan* v. *State of Madras*[8], holds that even if the right to act and plead is to be deemed comprised in the right to practise the profession guaranteed under Article 19 (1) (*g*) there is nothing in the Constitution to exempt such right wholly from the taxing power of the State, and the proper way to reconcile the rights guaranteed under Article 19 and the power to tax contained in the several provisions of the Constitution is that if the taxation is for legitimate revenue purposes then it is not invalid merely because it may adversely affect any of the fundamental rights. In *State of Bihar* v. *Sailabala Devi*[9], the Supreme Court decides that the restrictions imposed by section 4 (1) (*a*) of the Indian Press (Emergency Powers) Act on freedom of speech and expression are solely directed against the undermining of the security of the State or the overthrow of it and are within the ambit of Article 19 (2) of the Constitution. *Balakrishna* v. *State of Madras*[10], points out that the "total" prohibition of the exercise of any right cannot be justified as a "reasonable"

1. (1952) 1 M.L.J. 68.
2. (1952) 1 M.L.J. 174.
3. (1952) 1 M.L.J. 38.
4. (1952) 1 M.L.J. 423 (S.C.).
5. (1952) 1 M.L.J. 279.
6. (1952) 1 M.L.J. 284.
7. (1952) 1 M.L.J. 481.
8. (1952) 1 M.L.J. 208.
9. (1952) 2 M.L.J. 323 (S.C.),
10. (1952) 1 M.L.J. 514.

restriction within the meaning of the expression as it occurs in Article 19 (5) and (6), and will be invalid unless it is for a short and prescribed time; consequently, it is doubtful whether the prohibition of acquisition and installation of new looms imposed in terms by clause 12 (4) of the Cotton Textile (Control) Order, 1948, is valid having regard to the rights conferred on the citizen by Article 19 (1) (*f*) and (*g*). In *Devanugraham*, In re[1], it is held that Article 20 (2) does not take away the right to institute a second prosecution when the first is found to be a nullity by reason of want of necessary sanction. *Satyavathi* v. *State of Madras*[2], lays down that acquisition of lands for providing house-sites for Adi-Andhras would be a public purpose within the meaning of Article 31. *Shamdasani* v. *Central Bank of India*[3] lays down that the words "save by authority of law" in Article 31 show that it is a prohibition of unauthorised governmental action against private property and is not intended to prevent wrongful individual acts. In *Janaki* v. *Srirangammal*[4], it is pointed out that an order of the High Court rejecting an application under Order 41, rule 19, of the Civil Procedure Code, to restore and rehear an appeal dismissed for default of appearance is neither a judgment, nor a decree, nor a final order, and is a matter of procedure only, and no appeal will lie to the Supreme Court under Article 133 of the Constitution. The decision of the Supreme Court in *State of Bombay* v. *P.J. Naick*[5], makes it clear that Article 166 (1) does not require a magic incantation which can only be expressed in a set formula of words and what is to be looked at is whether the substance of the requirements is there. *Ramamurthi*, In re[6], emphasises that the right which is the foundation of a petition under Article 226 is a personal and individual right and the High Court's power can only be invoked at the instance of a person who has a personal grievance against an act of the State, in its executive capacity, which inflicts a legal injury on him; and the nomination of a member to the Legislative Council by the Governor does not infringe the personal right of any elected member, even indirectly, so as to entitle him to sustain an application for the issue of a writ of *certiorari*. In *Chakkarai Chettiar*, In re[7], it is held that a writ of *quo warranto* also cannot be issued unless there is infraction of a personal right and the words "and for any other purpose" in Article 226 do not mean a purpose other than the protection of the legal rights of a person. *Anandan Nambiar*, In re[8], takes the view that it is only in exceptional cases that writs under the wide powers—"for any other purpose"—in Article 226 can be issued, such as for instance, where there has been a clear violation of statutory law, or when principles of natural justice have been violated, or perhaps where there has been *mala fide* discrimination against an individual to the detriment of his rights. It is further held that a member of the Legislative Assembly lawfully detained, though without trial under the Preventive Detention Act cannot be permitted to attend the sittings of the House, though during such period he will have the right to correspond with the Speaker and Chairman of the Committee of Privileges of the House. In *Veerappa Pillai*, v. *Raman and Raman*[9], the Supreme Court expresses the view that writs under Article 226 are intended to be issued by the High Court in grave cases where the subordinate tribunals, bodies, or officers act wholly without jurisdiction or in excess of it or in violation of principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, error, omission, or excess has resulted in manifest injustice; but however extensive that jurisdiction may be the High Court cannot act as a Court of appeal and thus it cannot give a direction to the Regional Transport Authority to grant permits to a particular party. *Cosmopolitan Club* v. *Deputy Commercial Tax Officer*[10], points out that the maintainability of writ petitions under Article 226 was impossible to circumscribe, define or restrict and the writs are all discretionary, dependent on the facts of each case and the nature of the illegality or wrong alleged.

1. (1952) 1 M.L.J. 550.
2. (1952) 1 M.L.J. 42.
3. (1952) 1 M.L.J. 423 (S.C.).
4. (1952) 2 M.L.J. 197.
5. (1952) 2 M.L.J. 338 (S.C.).
6. (1952) 2 M.L.J. 671.
7. (1952) 2 M.L.J. 779.
8. (1952) 1 M.L.J. 1.
9. (1952) 1 M.L.J. 806.
10. (1952) 1 M.L.J. 401.

Chandra v. *Madras State*[1], expresses the view that where a suit is the proper and adequate remedy an order under Article 226 will not ordinarily be made. In *Sambandam* v. *The General Manager, S.I.R.*[2], it is stated that the rule that the Court will not ordinarily interfere under Article 226 with an order where there is another adequate remedy available to the party is a rule of discretion only, for the guidance of the Court and not a limitation on its power. *A. K. Gopalan*, In re[3], stresses the principle that the Constitution does not allow reasons of state to influence the judgment of the Court and where an impugned order is vitiated by an intention on the part of the Government to evade a judgment of the High Court setting free a person under detention, somehow or other, the order cannot be upheld notwithstanding any belief on the part of government that the judgment of the High Court was erroneous. In *Ponnuswami* v. *Returning Officer, Namakkal*[4], the Supreme Court holds that jurisdiction under Article 226 stands excluded in all matters provided for in Article 329 which covers all "electoral matters." *Chenchanna Naidu* v. *Praja Seva Transports, Ltd.*[5], rules that where the High Court's civil jurisdiction under Article 226 is invoked the provisions of the Civil Procedure Code will be attracted to the proceeding. *Rajaram Reddi*, In re[6], holds that a subordinate Court should only make a reference to the High Court when it is satisfied that a case pending before it involves a real or substantial question as to the validity of an Act and a mere plea that an Act is *ultra vires* will not suffice. *Govindarajulu Naidu* v. *State of Madras*[7], is an important decision holding that Article 286 (1) (*b*) is limited to the period covered by the actual exportation or importation of goods and the power of the State to impose tax at any stage before or after is not affected, and further both in Article 286 (1) (*b*) and 286 (2) the State's power to tax export or import or inter-state trade is taken away only in respect of sales or purchases made directly in relation to the goods which are the subject-matter of the transportation, either in inter-state or international commerce, whether such sales take place prior to the commencement of the transport or during its progress. *Sambandam* v. *General Manager, S.I.R.*[2], points out that the rule that civil posts under the Government are held at pleasure is subject to the principles in Article 310 (2) as to payment of compensation, competency of the authority terminating the service, etc. *Michael* v. *Venkateswaran*[8], holds that the Constitution (Scheduled Castes) Order, 1950, is valid and within the powers conferred on the President by Article 341 (1) of the Constitution.

CONTRACTS: In *Firm of T. N. Rao* v. *Ramakrishnayya*[9], it is pointed out that when a contract in writing is signed by the parties, they are bound by the terms contained therein whether they take the trouble of reading them or not, and the principle extends to cases where the contract does not actually contain the terms but a reference is made to another document or contract where those terms are to be found. *Official Assignee of Madras* v. *Narayana Mudaliar*[10], recognises that insolvency is not a disqualification preventing a person from entering into a contract within the meaning of section 11 of the Contract Act and there is nothing in law which prevents an insolvent who has not yet obtained his discharge from borrowing or making himself liable financially. *Nagappa Chettiar* v. *Veeyares & Co.*,[11] holds that *budla* or forward contracts in shares are not void as opposed to section 23. In *Kedar Lal Seal* v. *Hari Lal Seal*[12], the Supreme Court makes it clear that section 43 dealing with contribution will stand excluded by section 82 of the Transfer of Property Act where the right to contribution arises out of a mortgage. The doctrine of frustration is considered in *Narasu* v. *P. S. V. Iyer*,[13] and it is held that it applies where there is implied in the contracts a condition that they will cease to be operative if the basis on which they rest disappears or becomes fundamentally altered;

1. (1952) 1 M.L.J. 206.
2. (1952) 1 M.L.J. 540.
3. (1952) 2 M.L.J. 690.
4. (1952) 1 M.L.J. 775 (S.C.).
5. (1952) 1 M.L.J. 448.
6. (1952) 1 M.L.J. 468.
7. (1952) 2 M.L.J. 614.
8. (1952) 1 M.L.J. 239.
9. (1952) 2 M.L.J. 662.
10. (1952) 1 M.L.J. 662.
11. (1952) 2 M.L.J. 797.
12. (1952) 1 M.L.J. 431.
13. (1952) 2 M.L.J. 832.

but, this is only a rule of construction which must yield if the agreement discloses a contrary intention ; and, the fact that the contract is a continuing one extending over a period fixed or indeterminate does not exclude the application of the doctrine of frustration ; and, the nature of the trade is a material element in determining whether the events which happened merely suspended the performance under the a contract or put an end to it. *Lakshmana Prasad & Sons* v. *Achuthan Nair*[1], takes the view that a contract for purchase of a motor-car from a dealer must be deemed to be one to sell it at the controlled price inasmuch as the vendors are not expected to commit an offence by selling it at any other price, that when it is discovered later that the transaction has not taken place on that basis, the vendors are bound to return the difference in price as due to a mistake of fact, under section 72, and the purchaser is not bound to rescind the contract and return the vehicle. *Kumaraswami* v. *Karuppaswami*[2], holds that the principle that it is open to one party to keep the contract alive can have application only when the contract is executory or where there is still something to be performed under the contract and can have no application where time for performance has arrived and there has been a breach. In *S. Subba Rao* v. *P. K. Ginning and Pressing Factory*[3], it is stated that where goods are sold by sample and the goods supplied do not conform to it, the proper forum for recovery of damages is the Court of the place of contract and not the Court in the place to which subsequently the consignment may be sent at the instance of the buyer.

SPECIFIC RELIEF ACT : It is pointed out in *Sankaralinga Nadar* v. *Ramaswami Nadar*[4], that specific performance of a transaction which was for proper consideration when it was entered into could not be refused on the ground that at the time of the suit the value of the property had considerably risen ; that with reference to section 22 (2) of the Specific Relief Act, the hardship should be one collateral to the contract and not in relation to a term of the contract, such as the quantum of consideration ; and, the discretion exercisable under the section is one to be exercised on judicial principles and capable of correction by a Court of appeal. *Sanaga Thevar* v. *Thanukodi Ammal*[5], mentions that under section 27 (*b*) the conditions to be satisfied are that the plaintiff must prove that the subsequent purchaser was not a purchaser for value, that he had not purchased in good faith, and that he had notice of the original contract.

COMPANY LAW : *Narayanan Chettiar* v. *Kaleswarar Mills, Ltd.*,[6] elucidates a number of points concerning the position of the chairman of a meeting of shareholders. It holds that it is not open to a chairman to stop the meeting and dissolve it before the business is finished ; it is the right of the shareholders assembled at the meeting to decide whether they should continue the business of the meeting on that day or adjourn it to a subsequent date ; if the chairman without the consent of the shareholders stops the meeting and declares it dissolved, the meeting may elect another chairman and conduct the remaining business. In *Public Prosecutor* v. *Ustepalle Swami Chetty*[7], it is stated that with regard to offences under the Companies Act there is no provision that an offence should be taken cognizance of only on complaint and hence any person may set the criminal law in motion. *Associated Industrial Engineers* v. *Jabbar Sahib*[8], expresses the view that where a managing agency agreement provides both for an office allowance and a remuneration, it cannot be said that the amount expressly said to be payable as office allowance is in the nature of a minimum payment as remuneration within the meaning of section 87-C of the Companies Act, and the minimum payment contemplated in section 270 (1) is something different from the office allowance. *Gangipati Appayya, In re*[9], holds that it is not open to an accused to plead in answer to a charge under section 133 (3) his prior default in respect of calling of the general body meeting.

1. (1952) 1 M.L.J. 705.
2. (1952) 2 M.L.J. 785.
3. (1952) 1 M.L.J. 548.
4. (1952) 1 M.L.J. 44.
5. (1952) 1 M.L.J. 620.
6. (1952) 1 M.L.J. 18.
7. (1952) 2 M.L.J. 184.
8. (1952) 2 M.L.J. 378.
9. (1952) 1 M.L.J. 608.

PROPERTY LAW: *Appa Rao* v. *Veeranna*[1], states that an agreement to sell immoveable property does not create any interest in the said property unless a conveyance is executed; that the title of a subsequent purchaser with notice is subject to the obligation in section 91 of the Trusts Act and the liability under section 27, Specific Relief Act, to be compelled to execute a sale deed to the person in whose favour there is the prior agreement to sell; but, till such sale deed is executed the latter does not acquire any title to the same; and, the execution of a sale deed by the original owner without the subsequent purchaser joining the sale is of no avail. In *Venkataperumal Naidu* v. *Ratnasabapathy Chettiar*[2], it is ruled that the vendor's lien for purchase money will not entitle the vendor to remain in possession till the entire purchase money was paid and a mortgagee from the vendor has therefore no such right. *Ammenumma* v. *Beeviumma*[3], takes the view that a mortgagee has a right under section 67, Transfer of Property Act, to file a suit for sale, subject only to the condition prescribed therein and such a suit will not be barred under the Civil Procedure Code by reason of a decree for sale passed on the same mortgage in a prior suit and under section 100 of the Transfer of Property Act the same principle applies to a second suit for sale to enforce a charge. *Kedar Lal Seal* v. *Hari Lal Seal*[4], expresses the view that where the right to contribution arises out of a mortgage, section 82, Transfer of Property Act, excludes section 43, Contract Act and since the whole law of mortgages is now statutory the Court cannot have recourse to equitable principles however fair they may appear to be at first sight. *Rahimansa* v. *Madras Islamia Educational Institution*[5], points out that the co-mortgagor redeeming is only an instance of subrogation; that the redeeming mortgagor has not merely a charge but the mortgage as to his share is extinguished; and, as to the shares of the other mortgagors he stands in the shoes of the mortgagee and that when a co-mortgagor redeems the whole property, his right as a mortgagee, relates back to the date of the mortgage which he has redeemed the benefit of priority over the subsequent mortgagees. In *Arunachalam Iyer* v. *Lingiah*[6], it is held that a purchaser of properties subject to a charge created by a compromise decree, the satisfaction or discharge of which has not been obtained or has not become barred by limitation, does not get any assistance from the proviso to section 100 of the Transfer of Property Act even though he is a purchaser for value without notice of the charge. The decision in *Bahayya* v. *Venkataratnam*[7] points out that the terms of the notice contained in an expired lease should not be held to be terms of the lease arising by holding over under section 116, and that section 106 does not in terms apply to agricultural leases, and that the requirements as to notice terminating the tenancy are satisfied if in fact there is reasonable notice. In *President, C. P. C. C. Society* v. *K. B. Haji*[8], the view is taken that when once a proper notice has been given by the tenant and the tenancy has been properly terminated the landlord's right would be not to question the notice of termination of the tenancy but to sue for recovery of damages caused to the property.

HINDU LAW.—*Aravamudha Iyengar* v. *Ramaswami Bhattar*[9] rules that adoption is both a religious as well as a secular act and as such can be done only by a major; that minority in Hindu law comes to an end only on the completion of the 16th year and the rule applies equally to males and females, to the act of adoption as well as to an authority empowering the widow to make an adoption. In *Sri Hari Rao* v. *Venkiah*[10], it is pointed out that where a power of adoption is limited to adopting a specified boy, the adoption of any other boy would be invalid; that where the power is general and no special directions have been given, successive adoptions would be valid; and that where the power is general and special directions have been attached such directions must be strictly followed; but, if those directions become impossible of observance, then an adoption can validly be made in exercise of the general power. The subject of maternal affiliation

1. (1952) 2 M.L.J. 166.
2. (1952) 2 M.L.J. 241.
3. (1952) 2 M.L.J. 421.
4. (1952) 1 M.L.J. 431 (S.C.).
5. (1952) 2 M.L.J. 404.
6. (1952) 2 M.L.J. 347.
7. (1952) 1 M.L.J. 427.
8. (1952) 1 M.L.J. 459.
9. (1952) 1 M.L.J. 251.
10. (1952) 2 M.L.J. 392.

in adoption is considered in *Thirumaleshwara Bhatta* v. *Ganappayya*[1], where it is ruled that an adoptive father has no right to name a non-existent deceased wife in preference to the existing living wife as the mother of the boy so as to entitle him to succeed to the estate of such predeceased wife's father. *Thiruvathammal* v. *Vagunathan*[2], decides that the father is under a legal obligation to meet the marriage expenses of his daughter if there is joint family property, that the obligation will be only moral in the absence of such property, and where the mother has incurred the expenses of the marriage she can recover the same from her husband if he has joint family property. In *Munuswami Naidu* v. *Swaminatha Naidu*[3], it is recognised that an illegitimate son of a Sudra is not a member of the coparcenary and has no right by birth or right to partition or joint possession and if he has been in possession of any items of property for over the statutory period the coparceners of the putative father cannot claim partition of such property. In *Gur Narain Das* v. *Gur Tahal Das*[4], the Supreme Court points out that on the putative father's death, the illegitimate son succeeds as a coparcener to the separate estate of his father along with the legitimate son with a right of survivorship and is entitled to enforce partition against the legitimate son and unless exclusion and ouster are pleaded and proved he is entitled to partition though he is not in possession. The decision in *Annamalai Ammal* v. *Sundarathammal*[5], holds that a father may make a gift of immovable property of the joint family to his daughter within reasonable limits, and it cannot be questioned by the sons though such a gift was made before marriage, and where it is so made it may be assumed that it was meant as a marriage portion. It is pointed out in *Pundarikakshudu* v. *Venkiah*[6], that an alienation of ancestral property to purchase lands elsewhere, if not speculative and risky but beneficial to the family, will be binding on the family. The decision of the Full Bench of five Judges in *Peramanayakam Pillai* v. *Sivaraman*[7], holds that section 44 of the Transfer of Property Act does not affect the Hindu Law and entitle an alienee from a coparcener to claim joint possession of the alienor's share as a tenant-in-common; that neither the alienation of his share by a coparcener nor his insolvency operates to bring about a division in status; and that the alienee's interest is to be determined with reference to the date of the alienation and not with reference to the date of the suit for partition. The decision also indicates the principles which should guide the adjustment of equities between the alienee and the non-alienating coparceners whether the suit is one by the alienee for partition or by the coparceners for avoidance of the alienation. In *Subramanian* v. *Kalyanarama Iyer*[8], it is held that the share obtained by a father at a partition is the separate property of the father in which his widow will be entitled to a share. In *Chinnathayi* v. *K. P. Naicker*[9], the Supreme Court recognises that a member of a joint family owning an impartible estate can on behalf of himself and his heirs renounce his right of succession but any such relinquishment must operate in favour of all the branches of the family or in favour of the head of the family as representing all its members. *Punna Lal* v. *Mt. Naraini*[10], is an instructive decision of the Supreme Court on the liability of sons for a pre-partition debt of the father. It rules that a son is liable even after partition for the pre-partition debts of his father which are not illegal or immoral and for the payment of which no arrangement was made at the partition; that whether any arrangement made in that behalf is a proper arrangement or not will have to be decidied on the facts of each case; that a decree obtained against the father alone after partition in respect of such a debt cannot be executed against the property allotted to the son at the partition because the separated share of the son cannot be said to belong to the father nor has he any disposing power over it or its profits which he can exercise for his benefit; but the position will be materially different if the sons are made parties to the suit as legal representatives of the father and a decree is passed against them limited to-

1. (1952) 2 M.L.J. 716.
2. (1952) 1 M.L.J. 268.
3. (1952) 2 M.L.J. 239.
4. (1952) 2 M.L.J. 251 (S.C.).
5. (1952) 2 M.L.J. 782.
6. (1952) 2 M.L.J. 484.
7. (1952) 1 M.L.J. 308 (F.B.).
8. (1952) 2 M.L.J. 575.
9. (1952) 1 M.L.J. 292 (S.C.).
10. (1952) 2 M.L.J. 83 (S.C.).

the assets of the deceased defendant. In *Ratna Raja Kumar v. Narayaa Rao*[1], the Supreme Court holds that the principal factor to be considered in awarding maintenance to an illegitimate son is the exact income from the properties of the putative father; that the death of the father *pendente lite* and the adopted son's being entitled to enjoy the property is hardly a relevant consideration; but the Court must not overlook the losses of the father in business transactions and the fact of the illegitimate son being an able-bodied person with earning capacity. *Veerraju* v. *Narayanamma*[2] points out that the quantum of maintenance claimable by the widow of a coparcener is bound up with the fortunes of the family and if the income of the family decreases she must submit to a reduction of her maintenance. In *Muthalammal* v. *Veeraraghavulu Nayudu*[3], it is held that a widow's right to maintenance against her husband's estate in the hands of his coparcener is one which cannot be transferred or assigned when it is an inchoate right which has not crystallised into a definite sum. In *Annagouda Nathgouda* v. *Court of Wards, Satara*[4], the Supreme Court has ruled that the Hindu Law of Inheritance (Amendment) Act, 1929, has a limited scope and applies only to the separate property of a Hindu male who dies intestate and therefore the stridhana heirs of a maiden have to be ascertained with reference to the general provisions of the Hindu law of inheritance ignoring the statutory heirs who have been introduced by the Act. The decision in *Krishnamachariar* v. *Ramabhadran*[5], states that it is within the competence of a limited owner to incur expenditure in connection with a kanyadhana as an act of piety calculated to promote the spiritual bliss of her husband and the fact of the relationship of the kanya to the holder of the estate as daughter or grand-daughter or the fact of the indigence or affluence of the girl's father does not affect the question. *Ratnam Pillai* v. *Subramania Aiyar*[6] expresses the view that whether an alienation by a widow is for necessity or benefit of the estate ought to be judged by the condition in which the estate and the widow stood at the time of the alienation and not by reference to the possibility of sales of small lots of property out of the whole estate, and an alienation of the whole corpus making the bulk of the consideration a fund to be kept for her future maintenance purposes will not be valid. In *Nagi Reddi* v. *Durairaja Naidu*[7], the Supreme Court explains the basic principles of surrender and holds that a release by a widow in favour of the next heir and a stranger (the daughter and her husband) is wholly void and will not operate as a surrender of the whole estate to the next heir and a transfer of half share in it to the stranger. In *Mt. Phool Kuer* v. *Mt. Prem Kuer*[8], the Supreme Court reaffirms the requisites of a surrender and points out that where the surrender of the totality of the interest of the widow was not made in favour of the next heir, it cannot operate as a valid surrender, and succession to the estate will open on the death of the widow. *Arunachala Moopanar* v. *Arumugha Moopanar*[9], expresses the view that when a widow alienates a part of her husband's estate and then makes an unconditional surrender of the entire estate in favour of the nearest reversioner, it is not open to the surrenderee to recover possession and dispossess the alienee form the widow until the widow dies and the position is the same where the widow has voluntarily made a gift of a portion of the estate in favour of a donee.

MUHAMMADAN LAW.—The decision in *Ayisumma* v. *Mayomootty Umma*[10] holds that intestate succession of property belonging to Mappillas after 1937 could not be governed by any other law except that of the Muslim Personal Law (Shariat) Application Act governing the Muslims. *Masum Vali Saheb* v. *Illuri Moidin Sahib*[11] expresses the view that a transfer by a Muhammadan to his wife of immovable property in satisfaction of her dower debt is a sale and where the property is over hundred rupees in value the transaction will not be valid in the absence of a registered instrument. In *Abdul Kadir* v. *Mahlarathul Kadiria Sabha*[12], it is pointed out that the sanction of the kazi to alienation of wakf property was only by way of

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1. (1952) 2 M.L.J. 342 (S.C.).
2. (1952) 2 M.L.J. 734 (F.B.).
3. (1952) 2 M.L.J. 344.
4. (1952) 1 M.L.J. 414 (S.C.).
5. (1952) 1 M.L.J. 665.
6. (1952) 2 M.L.J. 679.
7. (1952) 1 M.L.J. 746 (S.C.).
8. (1952) 1 M.L.J. 823 (S.C.).
9. (1952) 2 M.L.J. 280.
10. (1952) 2 M.L.J. 933.
11. (1952) 1 M.L.J. 611.
12. (1952) 2 M.L.J. 657.

safeguard against improper alienations, and that purpose will be amply served by insisting on sanction of it either previous or subsequent, so long as there is an assurance that the transaction would be examined on its merits and there is an inquiry whether it is supported by legal necessity or benefit to the trust.

INSOLVENCY LAW.—The decision in *Chandramouleswaran* v. *Krishnaswami Naidu*[1] suggests that it may be difficult under the rules for the court to give any specific notice to the other creditors when a compromise is sought to be entered into between the petitioning creditors and the debtors; but, that difficulty may be obviated by court notice being put up on the notice board of the court that the petitioning creditor is seeking to settle the matter between himself and the debtor and that the other creditors who are interested and are already on record or not may take the necessary steps to safeguard their interests. *Thirumaleshwara Bhatta* v. *Govinda Bhatta*[2] points out that on adjudication of the father as insolvent not only the share of the father but also his power to dispose of his son's share would vest in the Official Receiver under section 28 of the Provincial Insolvency Act and that fact alone would not by itself convey to the auction purchaser the share of the son unless there is indication in the document or in the sale proceedings that the Official Receiver in fact purported to exercise that power of sale and did sell the son's share as well, and where prior to the sale the son sends a notice demanding partition there will be a division in status preventing the Official Receiver from exercising the power of sale. *Nallaperumal* v. *Singaravelu*[3] expresses the view that it is not incumbent on a creditor to satisfy the requirements of section 9 in asking for readjudication after the annulment of the original adjudication consequent on the failure of a composition scheme which intervened. In *Mohammad Hussain Sahib* v. *Syed Mohammad Rowther*[4] it is pointed out that by reason of the fact that when insolvency proceedings are annulled all proceedings taken during such period and all actions done during such period also get annulled, proceedings by which certain transactions were declared void will also get annulled. *Venkateswar Chetty* v. *Ganapathia Pillai*[5] holds that in regard to the starting point of limitation for an appeal on an order of adjudication the counting of the 30 days under section 75 (4) is in the case of parties to the proceeding from the date of the order of adjudication and in the case of third parties from the date of its notification in the gazette, and in so counting the period the time taken for obtaining a copy of the order of adjudication must be excluded under section 12 of the Limitation Act.

MADRAS AGRICULTURISTS RELIEF ACT.—In *Venkatasubbayya* v. *Mallappa*[6] it is pointed out that to give exemption under section 4 (*d*) of Madras Act IV of 1938 the property must be a "house" and where on the date of incurring the debt the house was not in existence there is no exemption afforded and the debt is liable to be scaled down. *Subbarayulu Seth* v. *Venkataramanamma*[7] holds that a debt contracted on the security of three houses and an independent vacant site in a Union which later on became a Panchayat, the debt cannot be regarded as a debt contracted on the security of house property alone and therefore it is liable to be scaled down. *Janakiramayya* v. *Ranganayakamma*[8] states that two tests are intended by section 4 (*h*) for the application of the exemption, namely, (i) whether the debt is due to a woman, and (ii) whether the value of the property owned by her, either as life estate holder or as absolute owner did not exceed Rs. 6,000. *Chozhi* v. *Lakshmi*[9] recognises that a party to a suit or proceeding can acquire a new right by reason of an Amending Act; but a debtor who has already obtained relief under sections 8 and 9 on the basis that the transaction was not an usufructuary mortgage as defined under section 10 (2) cannot claim relief under section 9-A conferred by the Amending Act of 1948 on the basis that the suit document is an usufructuary mortgage. *Krishnayya* v. *Venkatasubbarayudu*[10] takes the view that even after the Amending Act XXIII of

1. (1952) 2 M.L.J. 148.
2. (1952) 1 M.L.J. 681.
3. (1952) 2 M.L.J. 681.
4. (1952) 2 M.L.J. 823.
5. (1952) 1 M.L.J. 765.
6. (1952) 2 M.L.J. 471.
7. (1952) 2 M.L.J. 880.
8. (1952) 2 M.L.J. 36.
9. (1952) 1 M.L.J. 834.
10. (1952) 1 M.L.J. 638.

1948 there is no change with respect to the tracing back of a debt under section 9 because in the proviso to that section nothing is said about debts renewed after the Act came into force. *Kumaraswami* v. *Govindaswami*[1] is an interesting decision which holds that when a mortgagee is in possession under a usufructuary mortgage of 1927 containing a condition that in case the debt was not redeemed within five years the mortgagee would become the owner, the condition was a clog on the equity of redemption; and hence the mortgagee's possession after 1932 will only be that of a mortgagee and not that of a vendee; and so section 9-A will directly apply to the case, and the animus of the mortgagee that he remained in possession as vendee is not the decisive factor for the application of the section. In *Bramaramba* v. *Jegannatha Rao*[2], it is held that section 14 is a special provision which applies when there is a debt payable by the members of a family some of whom are agriculturists and some are not, that a substantive application is not necessary for a judgment-debtor to obtain the benefit of section 14 and it is sufficient if the debtor raises the objection based on the section in his counter-affidavit in the execution petition. *Kanakammal* v. *Kathija Beevi*[3] lays down that an application under section 19 is not one which comes under section 47, Civil Procedure Code and therefore the principle of *res judicata* in execution cannot apply. It also holds that it is not the bounden duty of the judgment-debtor when an execution application was pending to raise the question regarding scaling down, and if he failed to do so it is open to him at a later stage to file an application for scaling down. *Jagannadham* v. *Parthasarathy*[4] takes the view that after an application under section 19 has been finally decided it is not open to the judgment-debtor to file a similar application again for taking advantage of certain amendments in the method of scaling down intruduced by Act XXIII of 1948 and that neither section 16 of the Amending Act nor Explanation 1 to section 8 of Act IV of 1938 as amended gives retrospective operation to matters decided prior to the date of the amendment. *Narayanan Chettiar* v. *Rathinasami Pillai*[5] points out that a judgment-debtor would not have a right to file successive applications under section 20 or section 19 if the reliefs which he claims are the same in the several applications, but if a subsequent application is based on a provision of law not in existence at the time of a prior application of his, he will not be debarred from filing the later application simply because he had filed a prior application when the state of the law did not entitle him to the relief to which he became entitled by a subsequent change in the law. In *Venkataratnam* v. *Seshamma*[6] it is decided by the Full Bench that clause (ii) of section 16 of the Amending Act of 1948 applies to proceedings instituted before the commencement of the Act but which did not become final before such commencement and that clause (iii) would apply to decrees and orders even if they had become final before the commencement of the Act provided the decrees and orders had not been executed or fully satisfied.

MADRAS ESTATES LAND ACT.—*Butchi Ramayya* v. *Gundu Ramanna*[7] takes the view that lands situated in a zeroyti village forming part of a permanently settled estate do not cease to be such though they were obtained by the landholders in exchange for lands in a presettlement inam and civil courts will have no jurisdiction to entertain a suit to eject tenants from such lands. In *The District Board, Tanjore* v. *Noor Mohamed*[8], the Supreme Court lays down that the burden of proving that certain lands constitute an "estate" within the meaning of section 3 (2) (*d*) of the Estates Land Act is upon the party who sets up the contention. The tests for determining whether land in an estate is private land are dealt with by a Full Bench in *Periannan* v. *A. S. Amman Kovil*[9] which holds *inter alia* that cultivation of the lands or leasing of the lands under short terms may be one mode of proof; an intention to cultivate or resume for cultivation is also a test, but mere proof that the landholder is the owner of both the varams is not sufficient to prove that the land is private

1. (1952) 1 M.L.J. 619.
2. (1952) 2 M.L.J. 655.
3. (1952) 2 M.L.J. 53.
4. (1952) 2 M.L.J. 430.
5. (1952) 2 M.L.J. 859.
6. (1952) 1 M.L.J. 264 (F.B.).
7. (1952) 2 M.L.J. 408.
8. (1952) 2 M.L.J. 586 (S.C.).
9. (1952) 1 M.L.J. 71.

land under section 3 (10). *Zemindar of Ettiapuram* v. *Permmal Reddi*[1] states that a custom in respect of trees which were planted or grew upon the holding subsequent to the passing of the Estates Land Act is invalid and the landlord cannot claim to levy a tax on them. *Chockalingam Chettiar* v. *Sivakolandu Achi*[2] holds that the priority given to a purchaser under section 125 can only enure to him if he is a purchaser of the holding sold for arrears of rent and will not be available to the purchaser of a holding in execution of a rent decree for costs. *Kumaraswami Chetti* v. *Subramania Iyer*[3] points out that Order 21, rule 91, Civil Procedure Code, is not one of the provisions excluded under section 192 (1) of the Estates Land Act. In *Venkatakrishna Reddi Garu* v. *Venkataraju*[4] it is made clear that section 145 (2) will equally apply to a transferee prior to the filing of the application and a transferee subsequent to that date, that once the recognition is made the transferee will become the owner for all purposes of the Act, and therefore a sale deed in execution of a rent decree without issuing notice to the purcaser of the holding is void.

Stamp Act.—In *Lobo* v. *Marajul Doggu*[5] it is pointed out that a foreign promissory note even though duly stamped according to the Indian Stamp Act, has to be stamped again before the actual endorsement of the note in favour of a person who thereafter filed a suit on the note. *Appalanarasimhalu* v. *Board of Revenue, Madras*[6] explains that the power to make a reference under section 57 is not for the benefit of the revenue authority but is coupled with a duty cast on him to do the right thing and when an important and intricate question of law in respect of the construction of a document arises, it is his duty to make a reference and if he fails to do so the court can direct him to discharge that duty. The power of the State to levy stamp duty under Article 30 of the Stamp Act or under Article 25 of Schedule 1-A of the Act as amended in Madras, as enrolment fee of advocates was considered in *Ananthakrishnan* v. *State of Madras*[7] and the view was expressed that inasmuch as the enrolment fee is not with the object of deliberately abridging or destroying the right to carry on the legal professsion and is not so excessive or oppressive as to virtually abridge or destroy that right, it must be held to be proper and constitutional.

Court Fees Act.—*Kothandaraman* v. *Collector of Chingleput*[8] draws attention to the fact that an appeal against the final decree will be superfluous where no new ground could be urged in such appeal which could not be urged in an appeal against the preliminary decree; but, if filed, court-fee will have to be paid. The only exceptions are account suits and mesne profit cases, as in these cases, it is the final decree that settles the actual liabilities and not the preliminary decree and in appeals against both it is only the balance that need be paid to make up in the appeal against the final decree. In all other cases *ad valorem* court-fee will have to be paid in both appeals. *Kalyanakrishna Ayyar* v. *Lakshmi Ammal*[9] holds that in a suit by a succeeding trustee for recovery of possession of properties on the strength of the title of the temple ignoring an invalid alienation by a previous trustee, court-fee need be paid ony for recovery of possession and mesne profits and no more and section 7 (IV) (*a*) will not be attracted. In *Venkataswami Naicker* v. *Chinnayapuram Co-operative Stores*[10] it is held that in a suit for declaration that an award by the Registrar of Co-operative Societies is not valid and for injunction against attachment of plaintiff's properties in execution, court-fee under section 7 (iv-A) need not be paid for the declaration as the award cannot be equated with a decree of a civil or revenue court; nor will court-fee under section 7 (iv) (*c*) fall to be paid on the injunction. The decision in *Pappukannu Anni* v. *Thoppayya Mudaliar*[11] holds that easement suits do not fall under section 7 (iv) (*c*) as no question of title or possession is involved. *Akhandala Kurup* v. *Damodara Kurup*[12] decides that where in a plaint as it stood there was no allegation of any joint possession with other members of the family of at least one item of family property, Court-fee payable in respect of the

1. (1952) 2 M.L.J. 708.
2. (1952) 1 M.L.J. 770.
3. (1952) 2 M.L.J. 827.
4. (1952) 1 M.L.J. 643.
5. (1952) 2 M.L.J. 747.
6. (1952) 1 M.L.J. 641.
7. (1952) 1 M.L.J. 208.
8. (1952) 2 M.L.J. 852.
9. (1952) 2 M.L.J. 38.
10. (1952) 1 M.L.J. 8.
11. (1952) 2 M.L.J. 108.
12. (1952) 2 M.L.J. 145.

general relief of partition and delivery of plaintiff's share will fall under section 7 (iv-A). *Palaniappa Chettiar, In re*[1], takes the view that a person who has been a party to a settlement of accounts evidenced by a document cannot seek to have the accounts reopened having the entire document set aside and so is liable to pay court-fee under section 7 (iv-A). In *Sambiah* v. *Venkata Reddi*[2] it is held that where plaintiffs seek to recover possession of lands in which they claimed occupancy rights and with whose possession they had parted with legally and peacefully and under orders of court in judicial proceedings, and where a declaration of title to the kudi-varam was sought and strangers were added, court-fee for recovery of possession will have to be paid under section 7 (iv) (*c*). *Muthu Naicken* v. *Mariappa Pillai*[3] points out that a suit for redemption of a portion or share of hypothecated property must be valued on the same principle as a suit for redemption of the entire mortgage and the valuation would be the share of the mortgage amount as determined by the share in the mortgaged property to which the plaintiff lays claim. *Narayanaswami Ayyar* v. *Kesava Ayyar*[4] expresses the view that where an alienee from a cosharer who got divided in status, alleging in his suit that his vendor has been in joint possession of some of the items of the suit properties as a tenant-in-common with the other cosharers, seeks to convert such constructive joint possession into separate possession, the suit will have to be vauled under Article 17 and section 7 (v) does not apply.

EVIDENCE.—Pointed attention is drawn by the Supreme Court to the rules specially applicable to circumstantial evidence in *Hanumant* v. *State of Madhya Pradesh*[5], where Mahajan, J., observed : " It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hyopthesis of the guilt of the accused ; again, the circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every other hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused ; and it must be such as to show that within all human probability the act must have been done by the accused[6] ". The same decision also points out that it is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. In *Vokkaligara Yentappa, In re*[6], the view is expressed that sections 25 to 27 of the Evidence Act only prohibit the use of the confession against the accused and there is no prohibition of its use in favour of the accused. It is held in *Vasam Setty Appa Rao, In re*[7] that a statement by an accused to a Prohibition Officer is not a confessional statement as he is not a police officer and hence the rule requiring corroboration of resiled statements before a court could act upon them does not apply to it. *Ramakrishnayya* v. *Achutharamayya*[8] lays down that the evidence of a medical man giving opinion on what he had read but without examining the woman concerned in regard to an alleged period of gestation of over 345 days is of no value whatsoever. An exposition of the law relating to the necessity for corroboration of the complainant's evidence in the case of an offence of rape is made by the Supreme Court in *Rameshwar* v. *State of Rajasthan*[9], where it is pointed out that corroboration is not a pre-requisite to conviction but the necessity therefor as a matter of prudence except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge and in jury cases must find a place in the charge before conviction without corroboration. It is also held that a previous statement of the complainant can be accepted as corroboration provided the conditions prescribed in section 157, that is to say, made at or about the same time, *etc.*, are fulfilled.

1. (1952) 2 M.L.J. 3.
2. (1952) 1 M.L.J. 632.
3. (1952) 2 M.L.J. 172.
4. (1952) 1 M.L.J. 11.
5. (1952) 2 M.L.J. 631 (S.C.).
6. (1952) 1 M.L.J. 62.
7. (1952) 1 M.L.J. 658.
8. (1952) 2 M.L.J. 515.
9. (1952) 1 M.L.J. 440 (S.C.).

LIMITATION.—In *Venkataswami Chetty* v. *Ganapathia Pillai*[1], it is made clear that sections 5 and 12 of the Limitation Act are applicable to the case of an appeal by a third party against an order of adjudication. *Srinivasa Chettiar* v. *Arunachalam Chettiar*[2] holds that section 13 will apply and save limitation in respect of a suit brought against the manager of a joint Hindu family who had borrowed moneys from time to time and was afterwards away from India, inasmuch as such period of absence might be excluded in computing the period of limitation, and the presence of the junior members cannot operate to deprive the plaintiff of his right to exclude the manager's period of absence in computing limitation. *Shanmughasundaram Mudaliar* v. *Chidambaram Pillai*[3] lays down that where a servant is a domestic servant Article 7 does not apply, but Article 10 applies to a suit for recovery of bonus due under the agreement of employment against his employer. In *Ramaswami Goundar* v. *Marappa Goundar*[4] it is pointed out that an unauthorised alienation by a lawful guardian is only voidable and must be set aside within the time prescribed by Article 44 unlike an alienation by an unauthorised person which is void under the law and does not require to be set aside ; and that where the transfer is operative and the question is whether it is binding on the ward or not it has to be set aside within the time prescribed by Article 44. *Natesa Thevar* v. *Narayanaswami Padayachi*[5] reaffirms the view that Article 134 does not apply to court sales, and that where the mortgagor had knowledge of the fact that the properties as such were sold in court auctions and subsequently by the court auction purchasers in favour of a stranger, a suit for redemption by the purchasers of the equity of redemption from the original mortgagor will fall under Article 144 and if barred under that Article there will be no scope for the applicablity of Article 148. In *Singana Sathiraju* v. *Merla Sathamma*[6] it is held that an order on an execution petition " no instructions, no bids, sale stopped : execution petition closed " is not a 'final order' and a subsequent petition for execution filed after 12 years can be treated as a continuation of the earlier one. *Rambhadra Reddiar* v. *Ramachandra Reddiar*[7] points out that where an unnumbered execution petition returned for filling up certain particulars was re-presented eighteen months later without the requirements being complied with and without any application for excusing the delay, and there was an endorsement that the decree-holder was not pressing the petition and that it might be dismissed, and the court ordered " not pressed ; rejected ", the order must be held to be a final order. *Daivanai Achi* v. *Kannappa Chettiar*[8] lays down that in the case of an instalment decree after a default has occurred in the payment of instalments, an application for execution for the recovery of subsequent instalments is maintainable, where there is nothing to show that the decreeholder had previously sought to enforce the default clause, the application being governed by Article 182 (2) of the Limitation Act.

CIVIL PROCEDURE CODE.—In *Peda Rami Reddi* v. *Bichalu*[9], the view is expressed that the decision in a suit under Order 21, rule 63, Civil Procedure Code, to which the claimant and the judgment-debtor were parties as co-defendants regarding the title to the property in dispute will operate as *res judicata* in a subsequent suit between the claimant and the representative in interest of the judgment-debtor where the title to the same property is in dispute. *Dorayya* v. *Adinarayana*[10] states that the proceedings under the rules under Madras Act IV of 1938 are not of a summary nature and an order holding that the applicant, a mortgagor, was not an agriculturist will operate as *res judicata* and preclude him from raising the plea over again in a suit filed by him for possession of property and declaration that the amount due under the usufructuary mortgage was completely satisfied. *Vittal Shetty* v. *Parameshwari*[11] points out that if the order of the Judge under section 35 is not based on legal principles it can certainly be interfered with by the High

1. (1952) 1 M.L.J. 765.
2. (1952) 2 M.L.J. 66.
3. (1952) 2 M.L.J. 890.
4. (1952) 2 M.L.J. 506.
5. (1952) 2 M.L.J. 77.
6. (1952) 2 M.L.J. 67.
7. (1952) 2 M.L.J. 73.
8. (1952) 2 M.L.J. 464.
9. (1952) 1 M.L.J. 475.
10. (1952) 2 M.L.J. 359.
11. (1952) 2 M.L.J. 932.

Court in appeal. The nature of an order directing a precept under section 46 is considered in *Ramachandrudu* v. *Sait Bakraj Gulabchand Firm*[1] where it is held that such an order is merely one that tends to facilitate the execution of a decree and is not a step in the execution proceeding and as such is not appealable ; nor will an order extending the time for a precept be appealable. The decision of the Supreme Court in *Union of India* v. *Hira Devi*[2] holds that provident fund money is exempt from attachment and alienation and execution cannot be sought against it by way of appointment of a receiver. Also, though salary is not attachable under section 60 except to the extent indicated, there is no such exemption as regards arrears of salary. *Pattabhi Rama Rao* v. *Venkata Subbamma*[3] points out that where a judgment-debtor is dependent on her lands and unable to maintain herself otherwise, the fact that the whole of the cultivation is carried on through paid servants will not make the judgment-debtor any the less an agriculturist within the meaning of section 60 (1) (*c*). *Velayudham* v. *Governor-General in Council*[4] is an interesting decision holding that section 80 can have no application to the continuation of a suit properly instituted, when at the time of the institution the Government was not a necessary party ; the fact that, during the pendency of the suit, the interest of the defendant had devolved on the Government will not attract section 80, and notice to Government in such a case is not necessary. *Palvannam Pillai* v. *Ganapathy Ayyar*[5] expresses the view that a suit to declare the right of the plaintiffs to take out a funeral procession along a public road and to restrain the defendants from interfering is not barred by section 91. The scope and nature of a suit under section 92 is explained in *Mahant Pragdasji* v. *Narsibhai*[6] by the Supreme Court which states that a suit under the section is one of a special nature which presupposes the existence of a public trust of a religious or charitable character and can proceed only on the allegation that there is a breach of a trust or that directions from the Court are necessary for the administration thereof ; but when the case of the plaintiff fails for want of a cause of action there is no warrant for giving him a declaratory relief under section 92. *Kasi Viswanadhan* v. *Rudranna*[7] takes the view that a suit for directing the person in charge of a common fund, for whatever purpose it may be used, of a village, to render an account of the amount falls under section 92, the provisions of which must be complied with. In *Subba Rao* v. *Chalamayya*[8], the Full Bench holds : (i) If a judgment or decree of the High Court varies the decision of the lower Court in respect of a matter in controversy in the proposed appeal to the Supreme Court, then there is a right of appeal not only to the person against whom the variation has been made but even to the party in whose favour it is made, provided the matter in respect of which there has been a variation is the subject-matter of the proposed appeal to the Supreme Court. (ii) If the matter in respect of which there has been a variation is not a subject-matter of the proposed appeal, then, such variation would not confer a right of appeal ; and as regards matters unconnected with the matter in respect of which there has been a variation *ex hypothesi*, this will be the case when the variation has been completely in favour of the applicant. *Paramasivam Pillai* v. *Adilakshmi Ammal*[9] favours a wide and liberal construction of the language of Order 1, rule 10 (2), Civil Procedure Code and suggests that the attempt should be always to make parties all persons who may be necessary in order that there might be a final and complete adjudication of the points involved in the suit, and where in a suit for partition a stranger claims some of the items in his own absolute right he can be added as a party. In *Subba Naicker* v. *Kathiresa Thevar*[10], it is held that claims for rent for successive years arise under the same obligation and there can be no doubt that suits for rent attract the provisions of Order 2, rule 2, and the fact that there is likely to be a variation in the sums claimed by the landholder in the successive years by reason of new cesses being levied by Government will make no difference to the applicability of Order 2, rule 2. *Chalamiah* v. *Rubiah*[11] states

1. (1952) 1 M.L.J. 398.
2. (1952) 2 M.L.J. 265 (S.C.).
3. (1952) 1 M.L.J. 291.
4. (1952) 1 M.L.J. 235.
5. (1952) 2 M.L.J. 552.
6. (1952) 2 M.L.J. 94 (S.C.).
7. (1952) 2 M.L.J. 443.
8. (1952) 1 M.L.J. 365 (F.B.).
9. (1952) 1 M.L.J. 473.
10. (1952) 2 M.L.J. 752.
11. (1952) 2 M.L.J. 944.

that Order 9, rule 13, gives ample discretion to the court to impose terms for setting aside an *ex parte* decree and a direction to the defendant to deposit the costs of the suit before a certain date cannot be said to be unreasonable or punitive. In *Gurusanthayya* v. *Veerayya*[1] it is pointed out that the distinction between rules 2 and 3 of Order 17 is that, in order that rule 2 should apply, a party or his pleader should not be present in court whereas in the case of rule 3, even if the party or his pleader is present in court if there is failure to produce evidence, to cause the attendance of witnesses, or to perform any other act necessary to the further progress of the suit, Order 17, rule 3 applies. A point of nicety is dealt with in *Arunachala Chettiar* v. *Vadla Goundan*[2], where it is ruled that if a judgment-debtor dies after sale and before passing of confirmation order, no order of confirmation can be passed in the absence of the legal representatives of the judgment-debtor ; and, if passed, it will be a nullity. *Jayalakshmi Ammal* v. *Subbaraya Reddiar*[3] states that it cannot be said that 'Order 21, rule 89, is confined only to judgment-debtors or persons deriving interest from them as that would render nugatory the last alternative category of persons entitled to apply under Order 21, rule 89 (1), that is, persons holding an interest in the property such as mortgage decree-holders, charge-holders, etc., and so a decree-holder who has a charge on the concerned property can apply to set aside the execution sale. *Viswanadha Sastri* v. *Venkatakrishna Rao*[4] holds that where a decree-holder himself purchases property in execution levied for a much larger amount than what was due and to his knowledge, the sale should not be allowed to stand. The decision in *Kandaswami Nadar* v. *Province of Madras*[5] makes it clear that if a defendant requests the Court to dismiss a suit and grant permission to the plaintiff to file a fresh suit, when such fresh suit is filed he cannot turn round and say that the later suit is not sustainable because of the provisions of Order 23, rule 1. *Vikraman* v. *Krishnan Nair*[6] reaffirms the view that a mere agreement to take the oath on the challenge made by one of the parties and accepted by the other party cannot amount to an adjustment or compromise within the meaning of Order 23, rule 3. In *Abdul Azeez* v. *Pathumma Bi*[7], it is held that on a reading of Order 32, rule 1 and sections 2 (*a*) and 3 of the Indian Majority Act, a Muslim woman who is a major according to her personal law but is a minor according to the Majority Act cannot sue for dissolution of her marriage without being represented by a next friend and where a suit is filed without a next friend the proper course will be to return the plaint as not properly presented and not to dismiss it. *Kalidas* v. *Fakir Mohammad*[8] points out that a puisne mortgagee impleaded in a suit by the first mortgagee and obtaining a preliminary decree can (even if the mortgagor has paid off the first mortgagee) apply for a final decree in the same manner as the plaintiff might have done under Order 34, rule 4 (4) of the Civil Procedure Code. In *Kuttyal* v. *Sanjiva Rao*[9] it is laid down that a decree for rent in respect of a lease back which is part of a usufructuary mortgage is a claim arising under the mortgage and Order 34, rule 14, is a bar to bringing the mortgaged properties to sale in execution of such decree. *Seetharamayya* v. *Anjayya*[10] rules that on application under Order 37, rule 3, for leave to defend, the court can certainly impose conditions when it feels that the defence lacks *bona fides*. In *Travancore Forward Bank Ltd.* v. *Gopalakrishna Chettiar*[11], it is pointed out that in a suit under Order 37 where leave to defend has not been granted, the fee allowable to the advocate shall be half the fee prescribed under rule 31, (*b*) of the Legal Practitioners Rules subject to a maximum of Rs. 500. *Poomalai Ammal* v. *Subbammal*[12] rules that a party who did not choose to file an appeal against the judgment of the trial court and allowed it to become final cannot in a second appeal by the opposite party invoke Order 41, rule 33. *Veerappa Goundan, In re*[13], decides that no appeal lies under Order 43 against an order refusing to set aside an *ex parte* decree under section 5 (7) of the Madras Hindu Bigamous Marriage Prevention and Divorce

1. (1952) 2 M.L.J. 1.
2. (1952) 1 M.L.J. 400.
3. (1952) 2 M.L.J. 439.
4. (1952) 1 M.L.J. 645.
5. (1952) 1 M.L.J. 804.
6. (1952) 1 M.L.J. 452.
7. (1952) 1 M.L.J. 463.
8. (1952) 1 M.L.J. 624.
9. (1952) 2 M.L.J. 675.
10. (1952) 2 M.L.J. 31.
11. (1952) 2 M.L.J. 685.
12. (1952) 2 M.L.J. 884.
13. (1952) 2 M.L.J. 749.

Act, 1949, making interim provision for maintenance and for expenses of the wife who had applied for dissolution of marriage. The decision in *Rajahmundry Electric Supply Corporation* v. *State of Madras*[1] makes it clear that Order 45, rule 13 (2) (*d*), does not enable the High Court to give any direction to the successful party by way of restricting him or preventing him from exercising the rights to which he has become entitled under the final order of the High Court. *Chenchanna Naidu* v. *Praja Seva Transports, Ltd.*[2], states that where the civil jurisdiction of the High Court is invoked under Article 226 of the Constitution the Civil Procedure Code becomes applicable to the proceedings, and if there is an error apparent on the face of the record in the order quashing the proceedings under the Motor Vehicles Act, it can be set right in review under Order 47. In *Fernandez* v. *Ranganayukulu Chetty*[3] the view is expressed that the provisions of Order 47, rule 1, are not applicable where a revision petition under the Madras Buildings (Lease and Rent Control) Act, 1949 has been dismissed. The scope of Order 47, rule 8, is explained in *Subrahmanya Iyer* v. *Govindaswami Moopanar*[4] and it is held that where a Judge after allowing a review petition definitely stated that since the actual working out involved arguments the appeal itself would be reopened and reheard under Order 47, rule 8, there is no limit restricting the scope of the inquiry and the whole case can be reopened.

Criminal Law.—In *Baluswamy, In re*[5], it is pointed out that sections 85 and 86, Indian Penal Code, crystallise in a tabloid form the law relating to intoxication or drunkenness as a defence or plea in mitigation of a criminal offence; and that the words " state of intoxication " in section 86 mean intoxication rendering a person incapable of knowing the nature of the act in question or that he is doing what is wrong or contrary to law when he commits it; and that it would be extremely dangerous to extend the protection under the section to persons who commit serious offences under the influence of liquor in varying stages and differentiate culpability in their favour as opposed to similar offences by perfectly sober persons. An exposition by the Supreme Court of the right of private defence is contained in *Amjad Khan* v. *The State*[6] where it is observed that the right under section 97 extends not only to the defence of one's own body against any offence affecting the human body but also to defending the body of any other person ; that the right embraces the protection of property whether one's own or another person's against certain specified offences, like theft, robbery, mischief and criminal trespass ; and that the limitations on the right and its scope are to be gathered from the sections that follow. In *Seeni Naicker* v. *The State*[7], it is made clear that offences under sections 147 and 323, Indian Penal Code, are not offences relating to property and fall outside the scope of Chapter XVII of the Penal Code. *Mohiddin, In re*[8], points out that payment of illegal gratification by whatever name called, if taken by an officer for doing a favour or abstaining from doing a disfavour, will fall within section 161, but not mamools, like Pongal, Deepavali, Dasara, or Christmas paid to peons since they are not for showing favour or disfavour in the exercise of official functions. *Narayana Reddiar, In re*[9], holds that under the law, bribe-givers and bribe-takers are on a par and are treated as accomplices of each other and so where it is not shown that the previous statement of a bribe-giver was false or true and when such person is not bound to incriminate himself by sticking to the previous statement a prosecution against him under section 182 for tergiversation is misconceived. In *Chinnathambi, In re*[10], it is held that where the accused hung his wife who had been rendered unconscious by blows believing she was dead and to make it appear to be a case of suicide, and death really resulted not from the blows but under asphyxiation, a charge under section 302 is not sustainable and the conviction could only be under section 325. *Samatham Veerabhadrudu, In re*[11], lays down that where a person is convicted under section 302, the appellate court may

1. (1952) 2 M.L.J. 732.
2. (1952) 1 M.L.J. 448.
3. (1952) 2 M.L.J. 445.
4. (1952) 2 M.L.J. 180.
5. (1952) 1 M.L.J. 772.
6. (1952) 2 M.L.J. 97 (S.C.)
7. (1952) 2 M.L.J. 307.
8. (1952) 2 M.L.J. 11.
9. (1952) 1 M.L.J. 803.
10. (1952) 2 M.L.J. 550.
11. (1952) 2 M.L.J. 288.

where the evidence warrants it, modify the conviction to one under section 201; but where the Sessions Judge had convicted the accused under section 302 and had also found him guilty under section 319 or 411 in the alternative, acquitting him, however, of the charge under section 201, it would not be correct for the appellate court to modify the conviction to one under section 201, without the State filing an appeal against the acquittal. *Govindaswami In re*[1], emphasises that the ordinary penalty for murder is death in the absence of extenuating factors, and neither the fact of the youth of the accused that he is 16 or 17 years old nor the fact that he acted under fear or apprehension of a complaint being made against him for theft will be an extenuating circumstance. In *Bejoy Chand Patra* v. *State of West Bengal*[2], the Supreme Court has held that where an accused was charged under section 307, a conviction under section 326 will not be illegal, if, on the facts, it was open to the Sessions Judge to charge the accused alternatively, under sections 307 and 326 even in the absence of a charge under the latter section. The decision in *Periah* v. *Chandriah*[3] points out that in wrongful restraint there need not be any stoppage of the movement; that neither the physical presence of the obstructor nor an actual assault is necessary and that fear of immediate harm restraining a man out of a place where he wished to be and has a right to be is sufficient to constitute an offence under section 341. The ingredients of the offence of kidnapping under section 363 are brought out in *Abdul Azeez, In re*[4], as being firstly, the kidnapped was a minor; secondly the accused took or induced such person to leave out of lawful keeping; and thirdly the taking was done without the consent of the lawful guardian. In *Ramakrishna Padayachi* v. *The State*[5], it is made clear that the offence under section 426 can be compounded by the person to whom the damage was caused and the offence under section 448 by the person in possession of the property trespassed upon and hence where the compounding was with a careaker the real owner wil not be bound. The decision in *Ramaswami Udayar* v. *Raju Udayar*[6] points out that section 498 is for the protection of the husband and not for the benefit of the wife, so much so, where a woman is unwilling to live with her husband even if it be for good reasons and actually lives with another as husband and wife, the other person must be held to have ' taken ' the wife within the meaning of the section, and the wife's complicity in the transaction is no more material here than it is on a charge of adultery. In *Ramakrishna Reddy* v. *State of Madras*[7] the Supreme Court holds that the fact that a remedy may be open to an aggrieved officer under section 499 will not preclude proceedings under section 2 of the Contempt of Courts Act, where the defamation of a Judge of a subordinate court amounts to contempt of court. *Gopal In re*[8], holds that section 504, requires two essentials : (i) there must be intentional insult of a person and thereby due provocation, and (ii) the person insulting must intend or know it to be likely that such a provocation would cause prejudice to public peace. The mere forbearance of the person insulted is no protection to the offender. In *Ganapathi Udayar* v. *Chinnayya Mudaliar*[9] it is held that endorsement by a debtor on the back of a promissory note of a very much larger sum as paid by him and contending that it was entered as payment constitutes not preparation but a criminal attempt to cheat.

CRIMINAL PROCEDURE CODE.—*Venkatachala Naicken* v. *Panchayat Board, Ethapur*[10] points out that no court has any jurisdiction to compel one accused to produce the other accused in the case. A practice point of interest is dealt with in *Pedda Venkatanna*, In re[11], which holds that in a complaint and counter-complaint arising out of the same transaction when the prosecution proceeds on the basis of the complaint, it is its duty to exhibit the counter-complaint through the police officer who recorded it and also to prove the medical certificates of the persons wounded on the other side and place before the court a definite case for acceptance; the acceptance by the prosecution in such cases *in toto* of one complaint and examining only witnesses

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1. (1952) 1 M.L.J. 751.
2. (1952) 1 M.L.J. 411. (S.C.).
3. (1952) 1 M.L.J. 164.
4. (1952) 1 M.L.J. 536.
5. (1952) 1 M.L.J. 649.
6. (1952) 2 M.L.J. 212.
7. (1952) 1 M.L.J. 736 (S.C.).
8. (1952) 2 M.L.J. 470.
9. (1952) 2 M.L.J. 771.
10. (1952) 2 M.L.J. 776.
11. (1952) 1 M.L.J. 244.

who support it and give no explanation to the injuries caused to the other side is to be deprecated. Another practice point is referred to in *Umanatha Rao*, In re[1] and *Innasia Pillai* v. *Perumal Chettiar*[2], where it is observed that in warrant cases the accused persons even before they are charged and put upon their defence anticipate their defence by petitions raising preliminary points upon which the court passes judgment and these are then brought upon revision to the High Court pending which the trial of the case is adjourned, that such a procedure is unwarranted and makes for delay and extra work; and that an accused person has no right to raise a preliminary point before he is charged and he must wait till charged to defend himself and if he is convicted his first remedy is in most cases by way of appeal. In *Hanumant* v. *State of Madhya Pradesh*[3], it is stated that the Supreme Court will not disturb concurrent findings of fact of the courts of first instance and appeal save in most exceptional cases, as for instance, where the finding was based on the sole testimony of an unreliable witness who was himself a party to the preparation of a forged document in the case. The decisions in *Velur Devasthanam* v. *Sambandamurthi*[4], and *Nagi Reddy* v. *Venkatappa*[5] hold that orders under section 145, Criminal Procedure Code, are merely police orders to prevent breaches of the peace and decide no questions of title; that proceedings under the section should not be continued where there is no longer any apprehension of breach of peace and there is ample time for obtaining a civil remedy, and that the magistrate dropping proceedings does not become *functus officio* but has jurisdiction to pass further orders in the case, for winding up the proceedings. *Latchigouda*, In re[6], holds that the destruction of the notes of "inquest evidence" constitutes a flagrant violation of the provisions of section 162 and raises an inference of prejudice to the accused and he could not be deemed to have had a fair trial. In *Vokkaligara Yengtappa* In re[7], it is held that a statement by an accused recorded in a case diary is inadmissible in evidence under section 162 even if there is something in such a statement in favour of the accused. *Ramana Reddy*, In re[8], lays down that it is sufficient if before recording a confession a magistrate puts the necessary questions required by section 164 to the accused and it is not mandatory that he should keep on repeating these questions to him after every break in the recording of a long confession; also, it is not necessary for the magistrate to give reasons before beginning to record a confession for his satisfaction that the accused was going to make a voluntary statement. In *Ramaswamy Reddiar*, In re[9], it is held that where a magistrate of the second class not empowered to record a confession under section 164 but with power to hold an inquest under section 176, records a confession made by the accused during the inquest, it cannot be said that such confession is not admissible in evidence. *Vokkaligara Yengtappa*, In re[7], points out that under section 172, a court may use police diaries not as evidence in the case but to aid it in the inquiry or trial and the accused is not entitled to call for such diaries or to see them merely because they are referred to, but if they are used by the police officer to refresh his memory or if the court uses them to contradict a witness, the provisions of section 161 or section 145 of the Evidence Act would apply. In *Molagan*, In re[10], it is declared that though the accused is not entitled to look into the case-diary, the court may in its discretion permit the defence counsel to see any portion of it which the court considers in the interests of justice he should see, and in appropriate cases the committing court can permit defence counsel to look into a case-diary to verify what the accused told the police as recorded before formulating his defence. *Sakuntala Bai* v. *Venkatakrishna Reddi*[11] lays down that a prosecution for an offence arising out of the abuse of official position by an act not purporting to be official does not require sanction under section 197. In *Imam Sahib*, In re[12], it is held that the provisions of section 233 apply to summons cases also. The decision in *Bhagat Singh* v. *The State*[13] points out that a charge which relates to the accused firing at two persons is not a charge with respect to two offences and there is nothing

1. (1952) 2 M.L.J. 400.
2. (1952) 2 M.L.J. 706.
3. (1952) 2 M.L.J. 631 (S.C.).
4. (1952) 1 M.L.J. 161.
5. (1952) 2 M.L.J. 163.
6. (1952) 1 M.L.J. 42.
7. (1952) 1 M.L.J. 62.
8. (1952) 2 M.L.J. 501.
9. (1952) 2 M.L.J. 814.
10. (1952) 2 M.L.J. 186.
11. (1952) 1 M.L.J. 646.
12. (1952) 2 M.L.J. 185.
13. (1952) 1 M.L.J. 420. (S.C.).

wrong in law to regard a single act of firing by the accused as one offence only, though it may be that a single act in some cases may constitute more than one offence. *Krishnan Naidu*, In re[1], expresses the view that no general rule can be laid down as to when different offences may be said to have been committed in the course of the same transaction and the question when it arises must be determined on the facts of the particular case subject only to the requirement that when the trial Court splits up cases reference to it must be made in the judgment. It is pointed out by the Supreme Court in *Bhagwan Singh* v. *The State of Punjab*[2], that where a prosecution witness at the trial gives conflicting versions in chief and in cross-examination the prosecution is entitled to use the former statement of such witness in the committing Court either to contradict what was said in cross-examination or to corroborate what was said in chief and in either event, section 288 could be used to make the former statement substantive evidence. Whether an approver can be released on bail has been considered in *Krishna Reddi*, In re[3], and *Karuppa Servai* v. *Kundaru*[4], and they point out that an approver who was in remand when a pardon was tendered must be detained in custody under section 337 (3) till the termination of the trial of commital ensues, or till termination of the inquiry if committal does not ensue, and that the provisions of the section are mandatory. The scope of section 342 is elucidated by the Supreme Court in *Bejoy Chand Patra* v. *State of West Bengal*[5], and it is observed that to sustain a conviction that the examination of the accused under that section was not proper or adequate it is not sufficient for the accused merely to show he has not been fully examined as required by the section but he must also show that such examination has materially prejudiced him. *Mathali*, In re[6], points out that where in the committal Court all the circumstances appearing against the accused in the evidence given before the committing magistrate were put to the accused by the magistrate and answers obtained, and in the Sessions Court no new circumstance was disclosed in the evidence and the Sessions Judge after reading out to the accused his earlier statement asked him whether he wished to say anything more and the accused said he had nothing to add, it cannot be said that the examination of the accused was not proper, though it is desirable that the Sessions Judge should himself put separate simple questions to the accused so as to enable the demeanour of the accused explaining the incriminating circumstances alleged against him being observed. It is held in *Kathan Maistri* v. *Muthuveera Maistry*[7], that section 347, permits the Magistrate to convert a calendar case into a P. R. case even where during inquiry the evidence discloses an offence exclusively triable by a Sessions Court and it cannot be said that the section applies only to cases which are triable both by the Sessions Court as well as by magistrates and not to cases exclusively triable by the Sessions Court. *Narayanaraju*, In re[8], states that, under section 350, a judgment written by a predecessor while in office can be delivered by his successor and there is nothing illegal or irregular about it. The object of reading over the deposition prescribed in section 360 is explained by the Supreme Court in *Bhagwan Singh* v. *The State of Punjab*[2], as being intended to ensure that the record has faithfully and accurately embodied the gist of what the witness actually said and not to enable the witness to change his story. The decision in *Yalpanathan*, In re[9], is valuable as focussing attention to the hardship likely to be caused to the accused by the dispensing with under section 362 (4) of the framing of charge by a Presidency Magistrate in the city, and to the necessity for legislation to remove distinction and make the procedure the same for the mofussil and city magistrates. The decision in *Ravipati Sitaramayya*, In re[10], reveals different view regarding the scope of a reference to a third Judge under section 378; one of the learned Judges expressing the opinion that no fetter can be placed on the third Judge who will be at liberty to express and act on the opinion he arrives at and pass what in his view will be the appropriate sentence—even a sentence of death—and the other learned Judge stating

1. (1952) 1 M.L.J. 62?.
2. (1952) 1 M.L.J. 816 (S.C.).
3. (1952) 1 M.L.J. 286.
4. (1952) 1 M.L.J. 270.
5. (1952) 1 M.L.J. 411 (S.C.).
6. (1952) 1 M.L.J. 276.
7. (1952) 2 M.L.J. 549.
8. (1952) 2 M.L.J. 141.
9. (1952) 2 M.L.J. 118.
10. (1952) 1 M.L.J. 690.

that the third Judge cannot pass a death sentence in a case where the Judge favouring conviction thinks a sentence of transportation is appropriate, with the other Judge favouring acquittal. It is pointed out in *Devanugraham, In re*[1], that a prosecution launched without a proper sanction is a nullity and section 401 (3) is no bar to the institution of a fresh prosecution against the accused for the same offence on the same facts. The Supreme Court states in *Surajpal Singh* v. *The State*[2], that it is well established that in an appeal under section 417, the High Court has full power to review the evidence upon which the order of acquittal was founded; but it is equally well-settled that the presumption of the innocence of the accused is further reinforced by his acquittal by the trial Court, and that the acquittal can therefore be reversed only for very substantial and compelling reasons. *Narayana Reddi* v. *The State*[3], expresses the view that the High Court can quash a committal to the Sessions under section 437, only on a point of law, and an order of commitment resting upon no acceptable or valid evidence is a point of law on which the commitment can be quashed. In *Kunjikannan* v. *Uthayya*[4], it is pointed out that the powers given to the Sessions Judge and the District Magistrate under section 438, are purely discretionary and the revisional powers must be exercised sparingly. In *Public Prosecutor* v. *Kandaswami Mudali*[5], the opinion is expressed that under section 471, as it now stands it is essential that the accused is detained in a place and not with a person. The provision for maintenance to wives deserted by their husbands contained in section 488 is held in *Thamsi Goundan* v. *Kanni Ammal*[6], not to contravene Article 14 of the Constitution. It is pointed out in *Subbayamma* v. *Venkata Rao*[7], that in a case of maintenance under section 488, where the husband makes allegations about the wife living in adultery and makes that his defence to deny the claim of the wife to maintenance, the husband ought to begin the case and let in evidence of unchastity so that the wife may rebut it. *Sampoornam* v. *Sundaresan*[8] takes the view that section 488 (8) does not refer to a permanent residence, and the term "residence" refers to something more than a brief visit but not to such a continuity as to amount to domicile. *Karuppan Servai* v. *Kundaru*[9] holds that sections 497 and 498 cannot apply to an approver and in *Public Prosecutor* v. *George Williams*[10], it is declared that the provisions of section 497 (5) read with section 561-A, saving the inherent power of the High Court to give effect to an order under the Criminal Procedure Code, or to prevent abuse of the process of any Court, or otherwise to secure the ends of justice, will give it ample powers to deal effectively with accused persons released on bail who by continuing to commit the crimes denied in the appeal memo render themselves liable to rearrest and recommittal to custody. *Ramachari* v. *Ramachari*[11], lays down that where a petition for transfer is found to be absolutely devoid of merits and thoroughly frivolous and vexatious, it is a fit case for the High Court to exercise its power under section 526 (6) to put an end to the petition intended to protract the proceedings and harass the opposite party. *Narayanaraju, In re*[12], takes the view that where an application for adjournment was made after the defence closed its case, the mandatory provision of section 526 (8) does not apply. The decision of the Supreme Court in *Bhagwan Singh* v. *State of Punjab*[13], makes it clear that the Court is not bound to examine a witness called under section 540 itself as a Court witness and it cannot be held that it can never entrust the examination to the prosecuting counsel. The scope of section 540 is explained in *Rengaswami Naicker* v. *Muruga Naicker*[14], where it is stated that the section gives an unrestricted power to the Court to summon a witness, the only restriction being that the power shall not be exercised to save parties from trouble or expense; and it is not only the prerogative but the plain duty of the Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject; and it will not be an improper exercise of the power merely because the evidence taken supports the prosecution case.

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1. (1952) 1 M.L.J. 550.
2. (1952) 1 M.L.J. 426 (S.C.).
3. (1952) 2 M.L.J. 7.
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